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cussed above, between the English and the American law of inheritance has been used as a ground for not applying the rule in Shelley's Case.¹⁵ Such construction, whether advisable or not, is at least possible in America, and certainly affords a basis for distinguishing and reconciling the results of the English and American cases.

As a general proposition, technical meanings for formulas of conveyancing are desirable in order to secure stability of titles.¹⁶ Since the main reasons urged for the adoption of the proposition of the case are simply arguments for abolishing the rule in Shelley's Case altogether,¹⁷ a better result would be gained by legislation than by forced construction by way of exception.

CONSTITUTIONALITY OF THE FEDERAL YACHT TAX. — The Supreme Court has declared the power to tax to rest upon the reciprocal duties of protection and support between the state and the citizen.¹ When the constitutionality of a certain tax is questioned, the basic inquiry becomes whether the taxing power is rendering a *quid* of protection for the *quo* which it receives, in the shape of the tax, from the taxed object.² Obviously a state may tax all the property within its borders.³ A like power extends to all persons domiciled therein.⁴ While a poll tax is the simplest method of personal taxation,⁵ taxes are more often imposed in proportion to wealth and power.

Is it due process of law to include property outside of a state or of the United States in estimating this wealth and power? Even in our common-law conception of territorial sovereignty, it may be said that the benefits conferred by the state government do not stop at the borders. The law of the state of domicil determines legitimacy,⁶ the devolution of property at death,⁷ the right to act as a corporation,⁸ all of which are effective beyond the state line. State law confers property rights given effect to everywhere.⁹ It must be recognized, however, that in the end the benefit depends upon the foreign state or federal govern-

Westcott *v.* Meeker, 144 Ia. 311, 122 N. W. 964, criticized in 23 HARV. L. REV. 313; State *ex rel.* Farley *v.* Welsh, 162 S. W. (Kan.) 637; Hamilton *v.* Wentworth, 58 Me. 101; Carnedy *v.* Haskins, 54 Mass. 389; Peer *v.* Hennion, 77 N. J. L. 693; Lemacks *v.* Glover, 1 Rich. Eq. (S. C.) 141. It is to be noted that these are all cases of wills where greater scope in construction is usually allowed. 1 TIFFANY, REAL PROPERTY, § 132; 29 L. R. A. N. S. 1038.

¹⁵ Tucker *v.* Adams, 14 Ga. 548; 28 L. QUART. REV. 148.

¹⁶ See 1 FEARNE, C. R. 201; 12 HARV. L. REV. 64.

¹⁷ A list of the states which have abolished the rule in Shelley's Case will be found in 1 STIMSON, AM. ST. LAW, § 1406.

1 Union Transit Co. *v.* Ky., 199 U. S. 194, 202, 204; State Tax on Foreign-Held Bonds, 15 Wall. [U. S.] 300, 302. "The theory of all taxation is that taxes are imposed as a compensation for something received by the taxpayer." Dalrymple *v.* Milwaukee, 53 Wis. 178, 185.

² GRAY, CONSTITUTIONAL LIMITATIONS ON THE TAXING POWER, § 168 a.

³ GRAY, CONSTITUTIONAL LIMITATIONS ON THE TAXING POWER, §§ 72, 73.

⁴ JUDSON ON TAXATION, §§ 414, 415.

⁵ COOLEY ON TAXATION, 3 ed., 28.

⁶ Scott *v.* Key, 11 La. Ann. 232.

⁷ Lawrence *v.* Kitteridge, 21 Conn. 576.

⁸ Bank of Augusta *v.* Earle, 13 Pet. (U. S.) 519.

⁹ Green *v.* Van Buskirk, 7 Wall. (U. S.) 139.

ment because it is according to the will of such state as expressed by its law that the right is recognized, or because the recognition is made obligatory by force of the Constitution. Upon state citizenship depends the right to sue in the federal courts,¹⁰ and only to state citizens does the privileges and immunities clause of the Constitution apply,¹¹ but here also it may be said that the right itself is secured by the federal power. At any rate, these benefits have not been considered sufficient to permit a state to include property beyond the jurisdiction in assessing a personal tax. Foreign realty, or any interest therein, must be excluded to comply with due process of law.¹² Tangible personality outside the state, it is said, receives no protection and cannot be included.¹³ The same rule, on principle, would seem applicable to a tangible chose in action, which is taxable at its *situs*.¹⁴ Tangible personality which has acquired no taxable *situs* elsewhere¹⁵ and choses in action¹⁶ may be included in a tax upon the owner at his domicil. This exception is justified by practical necessity and old custom; and it is only here that the misleading maxim *mobilia sequuntur personam* may be argued to have some application.

In deciding the constitutionality of the federal yacht tax, however, the Supreme Court held that the due process clause of the Fifth Amendment is not violated when tangible personality with a foreign *situs*, in this case a yacht, is made the basis of a tax by the federal government upon a domiciled citizen. *United States v. Bennett*, 34 Sup. Ct. 433. The court, while recognizing the restrictions upon the state's powers, held these not applicable to the federal government. Its benefits, it is said, extend beyond the territorial confines of the nation. It is true that the federal government procures recognition and protection for its citizens and their property abroad by treaties, but it may be argued that so also by agreement with the other states through the Constitution, each state has really procured similar benefits for its citizens in the several states. The federal government, however, spends huge sums on army and navy, ambassadors and consuls for the enforcement of these international rights, while on the state there is no such burden, since interstate enforcement of rights is delegated to the federal power, which again pays the expense. Furthermore, in the case of a yacht owned by an American citizen although in foreign waters, the admiralty jurisdiction of the federal government would apply. These differences would seem to justify the larger scope of federal taxation. If this analysis is sound, the economic undesirability of the result — taxing the same amount of wealth twice — is for the consideration of the legislature, not the court.¹⁷

¹⁰ CONSTITUTION OF THE UNITED STATES, Art. III, § 2.

¹¹ CONSTITUTION OF THE UNITED STATES, Art. IV, § 2.

¹² Louisville Ferry Co. v. Ky., 188 U. S. 385. GRAY, CONSTITUTIONAL LIMITATIONS ON THE TAXING POWER, § 168 a.

¹³ Union Transit Co. v. Ky. 199 U. S. 194. This practice was common before this decision, and, while questioned as a matter of policy, its legality did not seem to be doubted. See BEALE, FOREIGN CORPORATIONS, § 483; JUDSON ON TAXATION, § 420; COOLEY ON TAXATION, 3 ed., 86. See also 19 HARV. L. REV. 206.

¹⁴ New Orleans v. Stempel, 175 U. S. 309.

¹⁵ New York Central R. Co. v. Miller, 202 U. S. 584; Southern Pac. Co. v. Ky., 222 U. S. 63.

¹⁶ Commonwealth v. Northwestern Ins. Co., 107 S. W. 233 (Ky.).

¹⁷ COOLEY ON TAXATION, 3 ed., 9.